IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3761 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3761 of 1990

MR AJ PATEL for Petitioner No. 1

MS ARCHANA RAWAL, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 26/02/2004

ORAL JUDGEMENT

This petition is filed under Article 227 of the Constitution of India challenging the order dated 05.01.1990 passed by the Additional Chief Secretary to

the Govt. of Gujarat, Revenue Department (Appeals), Ahmedabad in a Revision Application No. 15/1987 filed by the petitioner setting aside the order passed by the Collector on 23.03.1987 and restoring the order of the Assistant Collector dated 17.10.1983 whereby entry No. 2357 was cancelled.

2. The petitioner has raised three important questions in this petition and they are as under :-

(i) Whether the R.T.S. authorities can go into the question arising out of the Provisions of Bombay Tenancy and Agricultural Lands Act, 1948 and enquire into the question of title ?

(ii) Whether the Additional Chief Secretary was right in law in cancelling the orders passed by the Collector and in restoring the order passed by the Assistant Collector, Bharuch ?

(iii) Whether the land in dispute can be said to be an agricultural land so as to attract the provisions of Tenancy Act when the case of the Government is that the land in dispute is a Padtar / grass land?

3. Before these questions are decided, it is necessary to have a look into the facts giving rise to the present controversy.

4. It is the case of the petitioner that the petitioner is a limited Company and as such a legal person entitled to maintain this petition. The petitioner Company has been engaged in producing industrial chemicals and for the said purpose, it has its factory at Ankleshwar in Bharuch District. With a view to provide residential accommodation to the members of staff of the petitioner Company, the petitioner purchased land bearing Survey No. 104, admeasuring Acres 4 - 07 Gunthas situated in village Gadkhol, Tal. Ankleshwar, Dist. Bharuch from its original owner, Yusuf Ismail in the year 1978 by executing a regular sale deed in its favour. The petitioner had paid total consideration of Rs.62,625/- towards the value of the said land.

5. Based on the said sale deed, a mutation entry No. 2357 dated 07.07.1978 was made in the revenue record and the same was certified by the competent authority in due course. Thereafter, for number of years, nothing was done with respect to the said land and thereafter all of a sudden, the Assistant Collector, Bharuch issued a

show-cause notice dated 21.06.1983 calling upon the petitioner Company to show cause as to why the mutation entry No. 2357 dated 07.07.1978 should not be cancelled by taking the matter in review under Rule 108(6) of the Land Revenue Rules.

6. In response to the said notice, the petitioner interalia contended that according to the stand of the Government, the land in question was a Padtar land and, therefore, there is no cultivation on the said land and hence, the land in dispute does not fall within the definition of "land" under the provisions of the Tenancy Act and there was no obligation on the part of the petitioner to be an agriculturist within the meaning of Section 2 (6) of the Tenancy Act. The entry was effected in the revenue record in the year 1978 and, therefore, proceedings cannot be initiated in the year 1983 after a lapse of a period of about 5 years. The petitioner has also alternatively contended that even if it is assumed that the Tenancy Act was applicable to the land in question, in that case, the competent authority under the Tenancy Act would have jurisdiction to decide the question about title and R.T.S. authority had no jurisdiction to go into the said question. The petitioner has also put an alternative argument that even if the Tenancy Act is held to be applicable, the petitioner Company was an agriculturist as it held lands elsewhere in the State of Gujarat and, therefore, the show-cause notice was required to be dropped. The Assistant Collector, however, was not persuaded by the submissions made by the petitioner and has passed an order on 17.10.1983 cancelling the mutation entry No. 2357 on the ground that the petitioner was not an agriculturist.

7. Being aggrieved by the said order, the petitioner preferred R.T.S. Appeal No. 276 of 1983 before the Secretary, Revenue Department (Appeal), Ahmedabad who by his order dated 30.08.1986 directed that the said application may be treated as an appeal under Rule 108(5) of the Bombay Land Revenue Rules and it may be disposed of by the Collector after hearing the parties to the proceedings. Pursuant to the said order, the Collector, Bharuch registered the said proceedings as Revision Application No.13/87 and he vide his order dated 23.03.1987 partly allowed the said revision application and remanded the matter to the Assistant Collector, Bharuch for a fresh decision with respect to the petitioner.

8. Being aggrieved by the said decision of the

Collector, the petitioner preferred Revision Application No. SRD.15/1987 to the Chief Secretary, Revenue Department (Appeals), Ahmedabad and the Chief Secretary vide his order dated 05.01.1990 dismissed the said revision application and set aside the order of the Collector dated 23.03.1987 and restored the order dated 17.10.1983 passed by the Assistant Collector, Bharuch.

9. It is this order of the Chief Secretary which is under challenge in the present petition filed under Article 227 of the Constitution of India.

10. In this matter, rule was issued on 09.08.1990 and order of status-quo with regard to possession was passed.

11. Mr. A.J. Patel, learned advocate appearing for the petitioner has submitted that the question as to whether a person is personally cultivating a particular land or not can be decided only by the authorities under the Tenancy Act under Section 85-A of the said Act. He has further submitted that Section 85-A of the Tenancy Act bars jurisdiction of any authority other than the authorities under the Tenancy Act so far as the questions arising under the Tenancy Act are concerned. The question is whether a person is cultivating a particular land or not is the one which arises under the Tenancy Act and, therefore, such a question could not have been decided by the R.T.S. authorities. The R.T.S. Authorities have no jurisdiction to decide the question of title and to set at naught an entry which was made in favour of the petitioner Company many years back. For this proposition, he relied on the judgment of this Court in the case of SIDDHARTHBHAI B. SHAH AND OTHERS V/S. STATE OF GUJARAT AND OTHERS, 1999 40 (3) G.L.H. 2527 wherein it is held that "So far as the proceedings under Rule 108 of the Rules, popularly known as R.T.S. proceedings are concerned, it is now well settled that entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the documents of title or the orders passed by the competent authority under special enactments. Independently, the revenue authorities have mentioned Rule 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transactions recorded in the entries are against the provisions of the particular enactment: Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed."

12. Mr. Patel has further submitted that Section 70 (a) of the Tenancy Act which deals with the duties and functions to be performed by the Mamlatdar also casts a duty on the Mamlatdar to decide whether a person is an agriculturist or not. Clause (mb) also casts a duty on the Mamlatdar to issue Certificate under Section 84-A and to decide under Section 84B or 84C whether the transfer or acquisition of land is invalid and to dispose of the land as provided in Section 84C. In view of this statutory provisions, it is apparent that the Mamlatdar is the authority who is competent to decide whether a person is an agriculturist or not and is also a competent officer to issue a Certificate under Section 84-A of the Act and to decide the matter under Section 84B or 84C whether a transfer or acquisition of land is invalid and to dispose of the land as provided in Section 84C. He has further submitted that Section 84C (1) contemplates inquiry to be made by the Mamlatdar and after the conclusion of the inquiry, to decide as to whether the transfer or acquisition is or is not invalid. Sub-section (2) of Section 84C also provides that if after holding such inquiry, the Mamlatdar comes to a conclusion that the transfer or acquisition of land to be invalid, he shall make an order declaring the transfer or acquisition to be invalid. For this proposition, he relied on the decision of this Court in the case of GORDHANBHAI CHHABABHAI PATEL AND OTHERS V/S. RAMESHCHANDRA KANUBHAI CHAUDHARI AND ANOTHER, 1999 40 (3) G.L.R. 2425.

13. Mr. Patel has further submitted that any order which is passed under Section 84C of the Tenancy Act can be challenged by way of an Appeal under Section 74 of the Act and any decision rendered in that appeal can further be challenged by way of revision under Section 76 of the Act. Unless and until this legal statutory remedies are exhausted or availed of by the respective parties, it is not open for the authorities in R.T.S. proceedings to declare that the transaction in question is not a transaction between two agriculturists. The net effect of the order passed by the Chief Secretary would be that the petitioner Company is non-agriculturist and land transferred in its favour can be held to be invalid. Such a course adopted by the Chief Secretary is not permissible under the Act.

14. Mr. Patel has further submitted that even if it is held that the sale is in violation of Section 63 of the Tenancy Act, proceedings will have to be initiated within reasonable period. Here in the present case, the

sale was executed in 1978 whereas the impugned show-cause notice was issued by the Assistant Collector in 1983 i.e. after the period of more than five years. For this purpose, he relied on the decision of the Hon'ble Supreme Court in the case of STATE OF GUJARAT V/S. PATEL RAGHAV NATHA AND OTHERS, 10 G.L.R. 992 wherein it is held that "It is true that there is no period of limitation prescribed under Section 211 of the Bombay Land Revenue Code but it is plain that this power must be exercised in facts of the case and the nature of the order. The Hon'ble Supreme Court has observed that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under Section 211. Section 65 shows that the period of three months is considered ample for the Collector to make up his mind and beyond that the Legislature thinks that the matter is so urgent that the permission shall be deemed to have been granted. Reading Secs. 211 and 65 it is clear that the Commissioner must exercise his revisional powers within a few months of the order of the Collector."

15. Mr. Patel has also relied on this decision for the purpose of the jurisdiction of the R.T.S. authorities. It was held that when the title of an occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious, the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent Court and not to decide the question of title himself against the occupant. Since the Chief Secretary has made an attempt to decide the title himself, the order is null, void and contrary to this settled legal position.

16. Mr. Patel has further relied on the Division Bench judgment of this Court in the case of BHAGWANJI BAWANJI PATEL V/S. STATE OF GUJARAT AND ANOTHER, 1971 (12) G.L.R. 156 wherein it is held that "the State Government cannot keep the sword hanging on any such person in respect of his property by choosing to act and revise the order at its sweet will which may be after seven years as it is sought to be done in this case. If on the other hand any such order was passed against the appellant by the Commissioner, he would have been obliged to move the State Government for reversal thereof, if permissible under sec. 211 of the Code, within three months or so at any rate he would have to file a suit within one year under Art. 14 of the first Schedule of the Indian Limitation Act and cannot wait till the State Government decides anything in that matter. In other words, the Legislature has thought it proper to provide for one year as a period within which any party affected

by such act or order passed by the officer of the Government could file a suit and there is no reason why the State Government also should not do so, if it were so affected by any such order such as the order of the Commissioner in the present case by revising the same under sec. 211 of the Bombay Land Revenue Code. The maximum period, it may be able to claim, cannot be more than a year from the date of the Commissioner's order, and to say that it can do so after any length of time viz. after about seven years or so, cannot be called at all reasonable."

17. Mr. Patel has also relied on the decision of the Hon'ble Supreme Court in the case of MOHAMAD KAVI MOHAMAD AMIN V/S. FATMABAI IBRAHIM, 1997 (6) S.C.C. 71 wherein the Hon'ble Supreme Court has held that "suo motu inquiry by the Mamlatdar under Section 84C of the Act should be initiated within a reasonable time. The Hon'ble Supreme Court has not found it reasonable even the suo motu inquiry started in September, 1973 in respect of the sale of land taking place in December, 1972."

18. On the basis of the aforesaid judgments of this Court as well as of the Hon'ble Supreme Court, Mr. Patel has submitted that there was no justification on the part of the Assistant Collector to initiate the suo motu proceedings by issuance of the show-cause notice for cancellation of the entry which was duly affected on the basis of the Regd. Sale Deed in 1978.

19. With regard to the question as to whether the petitioner being a Company can be said to be an agriculturist or whether it can hold agricultural lands, Mr. Patel has relied on the decision of this Court in the case of PRATHMESH FARMS PRIVATE LIMITED V/S. STATE OF GUJARAT, 2000 (41) 3 G.L.R. 2272 wherein this Court has held that "keeping in view the scheme of the Act and the various provisions therein, under the Tenancy Act and the Ceiling Act, it is clear that the word 'person' has not been kept confined only to natural born person. A right to acquire land has been given not only to the natural born person but also to the bodies as a part of the local self Govt. as also Cooperative Societies, Universities and like institutions. This Court has further held that for the purpose of holding the land it is not necessary that it can be held only by a natural person and it can certainly be held even by a juristic person as a legal entity and Company being a juristic person can certainly hold the agricultural land."

19. Mr. Patel has further submitted that even if it

is held that the sale in question is in violation of Section 63 of the Tenancy Act, it is to be held as invalid sale and not the void sale. He has further submitted that the Tenancy Act makes the difference between invalid transaction and the void transaction. For this purpose, he relied on the decision of this Court in the case of MAVJIBHAI DHARSIBHAI AND OTHERS V/S. STATE OF GUJARAT AND OTHERS, 1994 (35) (2) G.L.R. 1168 wherein this Court has held that "The scheme of the Act however makes a clear distinction between void transactions on the one hand and invalid transactions on the other. It is further held that the language of Section 63 thereof also makes it clear that the transaction in contravention thereof would be invalid and not void. It is further observed by the Court that an invalid transaction per se may be invalid but it will not be invalid unless it is decided or declared to be so. It has to be invalidated. It thus becomes clear that an invalid transaction is made equivalent to a voidable transaction and not a void transaction. It is a trite principle of law to say that a voidable transaction remains valid till it is voided, annulled or invalidated. In order to annul, void or invalidate a voidable transaction, powers for the purpose will have to be exercised within reasonable time and since such powers are not exercised within reasonable time, the invalid transaction cannot be per se invalid."

20. In the above view of the matter, Mr. Patel has submitted that the Chief Secretary has committed a grave error in law as well as on facts by rejecting the petitioner's Revision application and also by setting aside the order passed by the Collector. The Chief Secretary has exceeded his jurisdiction by deciding the issue regarding title of the property. The Chief Secretary was not right in holding that the transaction in question was void and that the petitioner had not acquired any right in the property in question. He was also not right in holding that the Assistant Collector has properly cancelled the entry. Therefore, Mr. Patel has submitted that the order passed by the Chief Secretary is required to be quashed and set aside and the petition be allowed.

21. Ms. Archana Rawal, learned AGP appearing for the respondents has, on the other hand, supported the order passed by the Chief Secretary and submitted that it requires no interference by this Court while exercising powers under Article 227 of the Constitution of India.

22. After having heard learned advocates appearing

for the respective parties and after having gone through the orders passed by the authorities below and after having given my anxious thoughts to the questions posed before the Court in light of the statutory provisions as well as settled legal positions, the Court is of the view that the Chief Secretary has committed an error in law as well as on facts. It is an admitted position that proceedings under Section 84 C of the Act were not initiated in the present case questioning the validity of the transaction in question. It is also an admitted position that the transaction was taken place in the year 1978 and the show-cause notice was issued by the Assistant Collector in 1983 i.e. after the expiry of the period of more than five years. It is also an admitted position that the petitioner being a Company and a juristic person, can hold the property in its own name.

23. On this admitted position, the question remains is as to whether the Assistant Collector has any power to cancel the entry which was duly certified in the year 1978 on the basis of the Regd. Sale Deed in favour of the petitioner Company. The authorities which are cited hereinabove clearly show that such powers are not vested in the R.T.S. authorities and if powers are exercised by such authorities without any jurisdiction, the decision taken by exercise of such power can certainly be held to be illegal and invalid. The order passed by the Assistant Collector, therefore, be held as an order passed without jurisdiction and invalid. Since the Chief Secretary has restored the said order, the order so passed by the Chief Secretary is also held to be illegal and invalid. Even otherwise, catena of judgments show that the action can be taken within a reasonable time and by no stretch of imagination, the period of five years can be said to be a reasonable. Even on this ground also, the action of the Assistant Collector is held to be illegal and null and void. This Court has taken the view in the case of PRATHMESH FARMS PRIVATE LIMITED V/S. STATE OF GUJARAT, 2000 (41) 3 G.L.R. 2272 that the Company being a juristic person can hold the agricultural land, and hence no fault can be found if a Company purchases such land in its name. In the present case as the order of the Assistant Collector is held to be bad in law and illegal, the impugned order of the Chief Secretary, restoring the order of the Assistant Collector, is also not tenable at law and hence it is quashed and set aside.

24. The petition is allowed. Rule made absolute without any order as to costs.

[K.A. PUJ, J.]

#Savariya#

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